

ASSEMBLY BILL

No. 201

Introduced by Assembly Member Wright

February 9, 2001

An act to amend Sections 94806, 94840, 94877, 94944, and 94985 of the Education Code, relating to private postsecondary education, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 201, as introduced, Wright. Private postsecondary education: Bureau for Private Postsecondary and Vocational Education.

(1) The existing Private Postsecondary and Vocational Education Reform Act of 1989 generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act.

The existing act sets forth standards applicable to every audit, review, statement, or financial report that the act requires to be prepared or filed.

This bill would require that any audit or financial report required to be prepared under the act contain a statement signed by the individual who has prepared the report certifying that the institution has paid or has not paid to the bureau all amounts owed to the Student Tuition Recovery Fund under a prescribed provision of the act. The bill would also require an institution that has not paid all amounts owed to the bureau under this provision to report to the bureau within 30 days on its plan to become current in these payments.

(2) Under a portion of the act that is known as the Maxine Waters School Reform and Student Protection Act of 1989, an institution that violates those provisions in connection with an agreement for a course of instruction is required to refund all consideration paid by or on behalf of the student. Other prescribed provisions of the Private Postsecondary and Vocational Education Reform Act of 1989 also authorize the bringing of civil actions against institutions that are alleged to violate these provisions.

This bill would require a student who brings an action or asserts any claim in an existing action for recovery on behalf of a class of persons, or on behalf of the general public, under prescribed provisions of law, to notify the bureau of the existence of the lawsuit, the court in which the action is pending, the case number of the action, and the date of the filing of the action or of the assertion of the claim, within 30 days of the filing of the action or of the first assertion of the claim, whichever is later. The bill would also require the student to notify the court that he or she has notified the bureau pursuant to this provision, and would prohibit judgment from being entered pursuant to this provision until the student has thus complied.

(3) Existing provisions of the act establish the Student Tuition Recovery Fund, and continuously appropriate the money in the fund to the bureau for the purposes of the act.

This bill would require the bureau to send to each student who applies for payment from the fund a written notice specifying the rights of a student under these provisions.

The bill would make an appropriation by authorizing a new purpose for expenditures from the fund.

(4) The bill would require the bureau to submit an annual report on the collection and expenditure of moneys collected as special assessments under the bill, as prescribed.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 94806 of the Education Code is
- 2 amended to read:
- 3 94806. (a) This section applies to every audit, review, and
- 4 statement prepared by an independent accountant and to every
- 5 financial report required to be prepared or filed by this chapter.



(b) Institutional audits and reviews of financial data, including the preparation of financial statements, shall comply with all of the following:

(1) An institution that collected seven hundred fifty thousand dollars (\$750,000) or more in total student charges in its preceding fiscal year shall file financial reports prepared in accordance with generally accepted accounting principles established by the American Institute of Certified Public Accountants, and audited or reviewed by an independent certified public accountant who is not an employee, officer, or corporate director or member of the governing board of the institution.

(2) An institution that collected less than seven hundred fifty thousand dollars (\$750,000) in total student charges in its preceding fiscal year shall file financial reports prepared in accordance with generally accepted accounting principles established by the American Institute of Certified Public Accountants. These financial reports may be prepared by an individual with sufficient training to adhere to the required accounting principles.

(3) Financial reports prepared on an annual basis shall include a balance sheet, statement of operations, statement of cash flow, and statement of retained earnings or capital. Nonprofit institutions shall provide this information in the manner required under generally accepted accounting principles for nonprofit organizations.

(4) The financial report shall establish whether the institution complies with subdivision (a) of Section 94804 or subdivision (a) of Section 94855, if applicable, and whether any of the circumstances described in subdivision (b) of Section 94804 or subdivision (b) of Section 94855, if applicable, exist.

(5) If an audit that is performed to determine compliance with any federal or state student financial aid program reveals any failure to comply with the requirements of the program, and the noncompliance creates any liability or potential liability for the institution, the financial report shall reflect the liability or potential liability.

(6) Work papers for the financial statements shall be retained for five years from the date of the reports and shall be made available to the ~~council~~ *bureau* upon request after completion of the report.

1 (c) Any audits shall be conducted in accordance with generally
2 accepted auditing standards and shall include the matters
3 described in subdivision (d).

4 (d) If an audit is conducted, the accountant shall obtain an
5 understanding of the institution's internal financial control
6 structure, assess any risks, and report any material deficiencies in
7 the internal controls.

8 (e) *Any audit or financial report shall contain a statement*
9 *signed by the individual who has prepared the report certifying*
10 *that the institution has paid or has not paid to the bureau all*
11 *amounts owed under Section 94945. The bureau shall be deemed*
12 *an intended beneficiary of that statement in any audit or financial*
13 *report. An institution that has not paid all amounts owed to the*
14 *bureau under Section 94945 shall report to the bureau within 30*
15 *days on its plan to become current in these payments.*

16 SEC. 2. Section 94840 of the Education Code is amended to
17 read:

18 94840. At least 90 days prior to the expiration of an approval
19 to operate, the institution shall complete and file with the council
20 an application form for renewal of its approval to operate. The
21 renewal application need only contain a description of any changes
22 made by the institution since the time its last application was
23 reviewed by the council. Fees for processing the renewal
24 application shall be based on the number and types of changes it
25 contains. The renewal application ~~shall~~ *may* be reviewed and acted
26 upon as provided in Sections 94802, 94804, and 94835, and
27 Section 94900 or 94915, whichever is applicable.

28 SEC. 3. Section 94877 of the Education Code is amended to
29 read:

30 94877. (a) If an institution violates this article or Section
31 94832 or commits an act as set forth in Section 94830 in
32 connection with an agreement for a course of instruction, that
33 agreement shall be unenforceable, and the institution shall refund
34 all consideration paid by or on behalf of the student.

35 (b) Notwithstanding any provision in an agreement, a student
36 may bring an action for a violation of this article or Section 94832
37 or an institution's failure to perform its legal obligations and upon
38 prevailing shall be entitled to the recovery of damages, equitable
39 relief, any other relief authorized by this article, and reasonable
40 attorney's fees and costs.

1 (c) If a court finds that a violation was willfully committed or
2 that the institution failed to refund all consideration as required by
3 subdivision (a) on the student's written demand, the court, in
4 addition to the relief awarded under subdivision (b), shall award
5 a civil penalty of up to two times the amount of the damages
6 sustained by the student.

7 (d) The remedies provided in this article supplement, but do not
8 supplant, the remedies provided under other provisions of law.

9 (e) An action brought under this section shall be commenced
10 within three years of the discovery of the facts constituting
11 grounds for commencing the action.

12 (f) Any provision in any agreement that purports to require a
13 student to invoke any grievance dispute procedure established by
14 the institution or any other procedure before bringing an action to
15 enforce any right or remedy is void and unenforceable.

16 (g) A student may assign his or her causes of action for a
17 violation of this article to the ~~council~~ bureau, or to any state or
18 federal agency that guaranteed or reinsured a loan for the student
19 or provided any grant or other financial aid.

20 (h) This section applies to any action pending under former
21 Chapter 7 (commencing with Section 94700) on January 1, 1990.

22 (i) *If a student commences an action or asserts any claim in an*
23 *existing action for recovery on behalf of a class of persons, or on*
24 *behalf of the general public, under Section 17200 of the Business*
25 *and Professions Code, the student shall notify the bureau of the*
26 *existence of the lawsuit, the court in which the action is pending,*
27 *the case number of the action, and the date of the filing of the action*
28 *or of the assertion of the claim. The student shall notify the bureau*
29 *as required by this subdivision within 30 days of the filing of the*
30 *action or of the first assertion of the claim, whichever is later. The*
31 *student shall also notify the court that he or she has notified the*
32 *bureau pursuant to this subdivision. Notwithstanding any other*
33 *provision of law, no judgment may be entered pursuant to this*
34 *section until the student has notified the bureau of the suit and*
35 *notified the court that the bureau has been notified. This*
36 *subdivision only applies to a new action filed or to a new claim*
37 *asserted on or after January 1, 2002.*

38 SEC. 4. Section 94944 of the Education Code is amended to
39 read:

1 94944. (a) The Student Tuition Recovery Fund is continued
2 in existence. All assessments collected pursuant Section 94945
3 shall be credited to this fund along with any interest on the money,
4 for the administration of this article. Notwithstanding Section
5 13340 of the Government Code, the money in the fund is
6 continuously appropriated to the ~~council~~ *bureau* without regard to
7 fiscal years for the purposes of this chapter. The fund shall consist
8 of a degree-granting postsecondary educational institution
9 account, a vocational educational institution account, and an
10 account for institutions approved under any provision of this
11 chapter that charge each enrolled student a total charge, as defined
12 in subdivision (k) of Section 94852, of less than one thousand
13 dollars (\$1,000), for the purpose of relieving or mitigating
14 pecuniary losses suffered by any California resident who is a
15 student of an approved institution and who meets either of the
16 following conditions:

17 (1) The student was enrolled in an institution, prepaid tuition,
18 and suffered loss as a result of, (A) the closure of the institution,
19 (B) the institution's failure to pay refunds or charges on behalf of
20 a student to a third party for license fees or any other purposes, or
21 to provide equipment or materials for which a charge was collected
22 within 180 days before the institution's closure, (C) the
23 institution's failure to pay or reimburse loan proceeds under a
24 federally guaranteed student loan program as required by law or
25 to pay or reimburse proceeds received by the institution prior to
26 closure in excess of tuition and other costs, (D) the institution's
27 breach or anticipatory breach of the agreement for the course of
28 instruction, or (E) a decline in the quality or value of the course of
29 instruction within the 30-day period before the institution's
30 closure or, if the decline began before that period, the period of
31 decline determined by the ~~council~~ *bureau*. For the purpose of this
32 section, "closure" includes closure of a branch or satellite
33 campus, the termination of either the correspondence or residence
34 portion of a home study or correspondence course, and the
35 termination of a course of instruction for some or all of the students
36 enrolled in the course before the time these students were
37 originally scheduled to complete it, or before a student who has
38 been continuously enrolled in a course of instruction has been
39 permitted to complete all the educational services and classes that
40 comprise the course.



(2) The student obtained a judgment against the institution for any violation of this chapter and the student certifies that the judgment cannot be collected after diligent collection efforts.

(3) The student obtained a default judgment against the institution for any violation of this chapter, and the student certifies that the judgment cannot be collected after diligent collection efforts. The bureau shall award the restitution pursuant to paragraph (1) of subdivision (f).

(b) Payments from the fund to any student shall be made from the appropriate account ~~with~~ *within* the fund, as determined by the type of institution into which the student has paid his or her fees, and shall be subject to any regulations and conditions ~~as the council shall prescribe~~ *prescribed by the bureau*.

(c) (1) (A) The institution shall provide to the ~~council~~ *bureau*, at the time of the institution's closure, the names and addresses of persons who were students of an institution within 60 days prior to its closure, and shall notify these students, within 30 days of the institution's closure, of their rights under the fund and how to apply for payment. If the institution fails to comply with this subdivision, the ~~council~~ *bureau* shall attempt to obtain the names and addresses of these students and shall notify them, within 90 days of the institution's closure, of their rights under the fund and how to apply for payment.

~~The council~~

(B) *The bureau* shall develop a form in English and Spanish fully explaining a student's rights, which shall be used by the institution or the ~~council~~ *bureau* to comply with this paragraph. The form shall include, or be accompanied by, a claim application and an explanation of how to complete the application.

(2) (A) If an institution fails to comply with paragraph (1), the ~~council~~ *bureau* shall order the institution, or any person responsible for the failure to provide notice as required by paragraph (1), to reimburse the ~~council~~ *bureau* for all reasonable costs and expenses incurred in notifying students as required in paragraph (1). In addition, the ~~council~~ *bureau* may impose a penalty of up to five thousand dollars (\$5,000) against the institution and any person found responsible for the failure to provide notice. The amount of the penalty shall be based on the degree of culpability and the ability to pay. Any order may impose joint and several liability. Before any order is made pursuant to this

paragraph, the ~~council~~ *bureau* shall provide written notice to the institution and any person from whom the council seeks recovery of the ~~council's bureau's~~ claim and of the right to request a hearing within 30 days of the service of the notice.

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(B) If a hearing is not requested within 30 days of service of the notice, the ~~council~~ *bureau* may order payment in the amount of the claim. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply, and the ~~council~~ *bureau* shall have all of the powers therein prescribed. Within 30 days after the effective date of the issuance of an order, the ~~council~~ *bureau* may enforce the order in the same manner as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure. All penalties and reimbursements paid pursuant to this section shall be deposited in the Private Postsecondary and Vocational Education Administration Fund established pursuant to Section 94932 or any successor fund.

(d) (1) Students entitled to payment as provided in paragraph (1) of subdivision (a) shall file with the ~~council~~ *bureau* a verified application indicating each of the following:

(A) The student's name, address, telephone number, and social security number.

(B) If any portion of the tuition was paid from the proceeds of a loan, the name of the lender, and any state or federal agency that guaranteed or reinsured the loan.

(C) The amount of the prepaid tuition, the amount and description of the student's loss, and the amount of the student's claim.

(D) The date the student started and ceased attending the institution.

(E) A description of the reasons the student ceased attending the institution.

(F) If the student ceased attending because of a breach or anticipatory breach or because of the decline in the quality or value of the course of instruction as described in subparagraph (E) of paragraph (1) of subdivision (a), a statement describing in detail the nature of the loss incurred. The application shall be filed within one year of the ~~council's bureau's~~ service on the student of the

notice described in paragraph (1) of subdivision (c) or, if no notice is served, within four years of the institution's closure.

(2) (A) Students entitled to payment as provided in paragraph (2) of subdivision (a) shall file with the ~~council~~ *bureau* a verified application indicating the student's name, address, telephone number, and social security number, the amount of the judgment obtained against the institution, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. The application shall be accompanied by a copy of the judgment and any other documents indicating the student's efforts made to enforce the judgment.

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(B) *The* application shall be filed within two years after the date upon which the judgment became final.

(3) The ~~council~~ *bureau* may require additional information designed to facilitate payment to entitled students. The ~~council~~ *bureau* shall ~~relieve a student from~~ *waive* the requirement ~~to that a student~~ provide all of the information required by this subdivision if the ~~council~~ *bureau* has the information or the information is not reasonably necessary for the resolution of a student's claim.

(e) Within 60 days of the ~~council's~~ *bureau's* receipt of a completed application for payment, the ~~council~~ *bureau* shall pay the claim from the Student Tuition Recovery Fund or deny the claim. The ~~council~~ *bureau*, for good cause, may extend the time period for up to an additional 90 days to investigate the accuracy of the claim.

(f) (1) If the ~~council~~ *bureau* pays the claim, the amount of the payment shall be (A) the greater of either (i) the total guaranteed student loan debt incurred by the student in connection with attending the institution, or (ii) the total of the student's tuition and the cost of equipment and materials related to the course of instruction, less (B) the amount of any refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, or compromise, or any other benefit received by, or on behalf of, the student before the ~~council's~~ *bureau's* payment of the claim in connection with the student loan debt or cost of tuition, equipment, and materials. The payment also shall include the amount the institution collected and failed to pay to third parties on behalf of the student for license fees

1 or any other purpose. However, if the claim is based solely on the
2 circumstances described in subparagraph (B) or (C) of paragraph
3 (1) of subdivision (a), the amount of the payment shall be the
4 amount of the loss suffered by the student. ~~In~~ In addition to the
5 amount determined under this paragraph, the amount of the
6 payment shall include all interest and collection costs on all student
7 loan debt incurred by the student in connection with attending the
8 institution.

9 (2) The ~~council~~ *bureau* may reduce the total amount specified
10 in paragraph (1) by the value of the benefit, if any, of the education
11 obtained by the student before the closure of the institution. If the
12 ~~council~~ *bureau* makes any reduction pursuant to this paragraph,
13 the ~~council~~ *bureau* shall notify the claimant in writing at the time
14 the claim is paid of the basis of its decision and provide a brief
15 explanation of the reasons upon which the ~~council~~ *bureau* relied
16 in computing the amount of the reduction.

17 (3) No reduction shall be made to the amount specified in
18 paragraph (1) if (A) the student did not receive adequate
19 instruction to obtain the training, skills, or experience, or
20 employment to which the instruction was represented to lead, or
21 (B) credit for the instruction obtained by the student is not
22 generally transferable to other institutions approved by the ~~council~~
23 *bureau*.

24 (4) The amount of the payment determined under this
25 subdivision is not dependent on the amount of the refund to which
26 the student would have been entitled after a voluntary withdrawal.

27 (5) Upon payment of the claim, all of the student's rights
28 against the institution shall be deemed assigned to the ~~council~~
29 *bureau* to the extent of the amount of the payment.

30 (g) (1) The director of the ~~council~~ *bureau* may negotiate with
31 a lender, holder, guarantee agency, or the United States
32 Department of Education for the full compromise or ~~write-off~~
33 *writeoff* of student loan obligations to relieve students of loss and
34 thereby reduce the amount of student claims.

35 (2) The director of the ~~council~~ *bureau*, with the student's
36 permission, may pay a student's claim directly to the lender,
37 holder, guarantee agency, or the United States Department of
38 Education under a federally guaranteed student loan program only
39 if the payment of the claim fully satisfies all of the student's loan

obligations related to attendance at the institution for which the claim was filed.

(3) Notwithstanding subdivision (e), the ~~council~~ bureau may delay the payment of a claim pending the resolution of the ~~council's bureau's~~ attempt to obtain a compromise or ~~write-off~~ ~~writeoff~~ of the claimant's student loan obligation. However, the ~~council~~ bureau shall immediately pay the claim ~~in the event~~ if any adverse action that is not stayed is taken against the claimant, including the commencement of a civil or administrative action, tax offset, the enforcement of a judgment, or the denial of any government benefit.

(4) *The bureau shall make every reasonable effort to obtain a loan discharge for an eligible student in lieu of reimbursing that student in whole or in part from the fund pursuant to federal student loan laws and regulations.*

(5) *Whenever the bureau receives from a student a completed application for payment from the Student Tuition Recovery Fund, the bureau shall, as soon as is practicable, cause to be delivered to that student a written notice specifying, in plain English, the rights of a student under this section.*

(h) (1) If the ~~council~~ bureau denies the claim, or reduces the amount of the claim pursuant to paragraph (2) of subdivision (f), the ~~council~~ bureau shall notify the student of the denial or reduction and of the student's right to request a hearing within 60 days or any longer period permitted by the ~~council~~ bureau. If a hearing is not requested within 60 days or any additional period reasonably requested by the student, the ~~council's bureau's~~ decision shall be final. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply.

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(2) *It is the intent of the Legislature that, when a student is enrolled in an institution that closes prior to the completion of the student's program, the student shall have the option for a teach-out at another institution approved by the ~~council~~ bureau. The ~~council~~ bureau shall seek to promote teach-out opportunities wherever possible and shall inform the student of his or her rights, including payment from the fund, transfer opportunities, and available teach-out opportunities, if any.*

(i) This section applies to all claims filed or pending under former Chapter 7 (commencing with Section 94700) after January 1, 1990.

SEC. 5. Section 94985 of the Education Code is amended to read:

94985. (a) Any institution that willfully violates any provision of Section 94800, 94810, 94814, or 94816, Sections 94820 to 94826, inclusive, Section 94829, 94831, or 94832 may not enforce any contract or agreement arising from the transaction in which the violation occurred, and any willful violation is a ground for revoking an approval to operate in this state or for denying a renewal application.

(b) Notwithstanding any provision of the contract or agreement, a student may bring an action for a violation of this article or for an institution's failure to perform its legal obligations and, upon prevailing thereon, is entitled to the recovery of damages, equitable relief, or any other relief authorized by this article, and reasonable attorney's fees and costs.

(c) If a court finds that a violation was willfully committed or that the institution failed to refund all consideration as required by subdivision (b) on the student's written demand, the court, in addition to the relief authorized under subdivision (b), shall award a civil penalty of up to two times the amount of the damages sustained by the student.

(d) The remedies provided in this article supplement, but do not supplant, the remedies provided under any other provision of law.

(e) An action brought under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the action.

(f) Any provision in any agreement that purports to require a student to invoke any grievance dispute procedure established by the institution before enforcing any right or remedy is void and unenforceable.

(g) A student may assign his or her cause of action for a violation of this article to the ~~council~~ *bureau*, or to any state or federal agency that guaranteed or reinsured a loan for the student or that provided any grant or other financial aid.

(h) This section applies to any action pending on the effective date of this section.

(i) This section supplements, but does not supplant, the authority granted the Division of Labor Law Standards Enforcement under ~~Section 1700.4~~ Chapter 4 (commencing with Section 79) of Division 1 of the Labor Code to the extent that placement activities of trade schools are subject to regulation by the division under the Labor Code.

(j) *If a student commences an action or asserts any claim in an existing action for recovery on behalf of a class of persons, or on behalf of the general public, under Section 17200 of the Business and Professions Code, the student shall notify the bureau of the existence of the lawsuit, the court in which the action is pending, the case number of the action, and the date of the filing of the action or of the assertion of the claim. The student shall notify the bureau as required by this subdivision within 30 days of the filing of the action or of the first assertion of the claim, whichever is later. The student shall also notify the court that he or she has notified the bureau pursuant to this subdivision. Notwithstanding any other provision of law, no judgment may be entered pursuant to this section until the student has notified the bureau of the suit and notified the court that the bureau has been notified. This subdivision only applies to a new action filed or to a new claim asserted on or after January 1, 2002.*

SEC. 6. The Bureau for Private Postsecondary and Vocational Education shall submit an annual report on the collection and expenditure of moneys collected as special assessments pursuant to the act adding this section. The bureau shall submit copies of this report to the chairpersons of the Assembly Committee on Higher Education, the Senate Committee on Education, the Assembly Committee on Budget, and the Senate Committee on Budget and Fiscal Review.